

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CRIMINAL APPLICATION No. 1903 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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KANUBHAI SHANKARBHAI NAYAK - Applicant(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

THROUGH JAIL for Applicant(s) : 1,
MR.LB DABHI APP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 19/10/2007

ORAL JUDGMENT

1. RULE. Learned A.P.P. Mr.L.B. Dabhi
waives service.

2. The petitioner has approached this Court upon being aggrieved by rejection of his application for furlough by order dated 06.09.2007 of I.G. Prisons. Petitioner's application for furlough was rejected on the ground that he had absconded in the year 2005 for 207 days and had to be arrested by police after being released on parole and hence, there was likelihood of the petitioner absconding again.

3. As held by full Bench of this Court in **Bhikhabhai Devshi V/s. State of Gujarat and others [1987(2)G.L.R. 1178]**, the authorities have the power and duty to consider grant or refusal of furlough leave due to the prisoners, having regard to the facts and circumstances of the case including the fact that the prisoner had surrendered late in past. That would be one of the relevant factors to be taken into account. However, generally, furlough is a matter of right.

4. In the facts of the present case, the petitioner is stated to have already been punished by an order forfeiting 207 days of remission and one furlough leave. That would mean that, after forfeiture of one furlough leave after his being brought to jail, one furlough leave falling due could be denied, but subsequent furlough could be denied only on reasonable

ground including reasonable apprehension about the prisoner absconding again. However, since behaviour of the petitioner is reported to be otherwise good and since he has already undergone almost seven years of imprisonment, his application for furlough could have been considered for releasing him on furlough on stricter conditions.

5. Therefore, petition is partly allowed and impugned order dated 06.09.2007 denying furlough to the petitioner is quashed with the direction that his application for furlough shall be reconsidered for making a fresh order in light of the above observations. Learned A.P.P. submitted that fresh order will be made under the aforesaid direction within three weeks of receipt of a copy of this order. Rule is made absolute accordingly.

(D.H.WAGHELA, J.)

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